

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

JUN 13 2006

Phil Lombardi, Clerk
U.S. DISTRICT COURT

SPIRITBANK, an Oklahoma banking
corporation,

Plaintiff,

v.

RYAN ALAN SWANBERG,

Defendant.

06CV 305 TCK-SAJ
Case No. _____

COMPLAINT

COMES NOW, SpiritBank, an Oklahoma banking corporation, by and through its attorneys of record, Kenneth E. Wagner and Marcus N. Ratcliff, of the law firm Latham, Stall, Wagner, Steele & Lehman, P.C., pursuant to 28 U.S.C. § 2201 and submits its Complaint for Declaratory Judgment. In support of this Complaint, SpiritBank alleges as follows:

JURISDICTION AND VENUE

1. SpiritBank is an Oklahoma banking corporation with its principal place of business located in the Northern District of Oklahoma.
2. Defendant Ryan Alan Swanberg ("Defendant") is an individual residing in Dakota County, State of Minnesota.
3. Defendant engages in business in Oklahoma.
4. This is an action for declaratory judgment pursuant to 28 U.S.C. §2201 (Federal Declaratory Judgment Act), for the purposes of determining an actual controversy between parties and other claims as hereinafter more fully appears.

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5. As this action involves a federal question, this Court has subject matter jurisdiction pursuant to 28 U.S.C. §1331.

OPERATIVE FACTS

6. Ryan Alan Swanberg is a person engaging in the business of placing telephone calls or sending emails to various companies in order to test their Do-Not-Call policies.

7. Mr. Swanberg claims that, on or about May 17, 2006, he sent an email to SpiritBank requesting to be placed on SpiritBank's Do-Not-Call list, for written verification of such inclusion, and for a copy of SpiritBank's Do-Not-Call policy.

8. Mr. Swanberg has sent SpiritBank notice that he plans to file a lawsuit against SpiritBank for failing to reply to his email request.

CLAIM FOR RELIEF

(Declaratory Judgment Against Ryan Alan Swanberg)

9. SpiritBank incorporates by reference paragraphs 1-8 above as if fully set forth herein.

10. SpiritBank seeks a declaratory judgment from this Court declaring that SpiritBank is not engaged in "telephone solicitation" or "telemarketing" as those terms are defined in 47 C.F.R. § 64.1200 in Oklahoma or any other state.

11. SpiritBank does not solicit business by placing telephone calls to, or otherwise contacting, individuals or businesses in any state.

12. SpiritBank has not engaged in any activities in Minnesota which could be categorized as "telephone solicitation" or "telemarketing".

13. SpiritBank has never contacted Ryan Alan Swanberg.

14. Because SpiritBank does not engage in “telephone solicitation” or “telemarketing”, SpiritBank bears no affirmative obligation under 47 C.F.R. §64.1200(d)(1) to maintain and/or distribute a written policy for maintaining a Do-Not-Call List.

15. Because SpiritBank does not engage in “telephone solicitation” or “telemarketing”, SpiritBank was under no duty to reply to Ryan Alan Swanberg’s email.

PRAYER FOR RELIEF

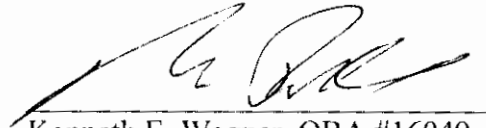
WHEREFORE, SpiritBank respectfully prays that the Court enter judgment in its favor and against Ryan Alan Swanberg by declaring that:

- a. SpiritBank does not engage in the business of “telephone solicitation” or “telemarketing”.
- b. SpiritBank has not violated 47 C.F.R. §64.1200 by not maintaining and providing to Ryan Alan Swanberg a copy of a Do-Not-Call written policy.
- c. SpiritBank has not violated 47 C.F.R. §64.1200 by not confirming to Ryan Alan Swanberg that he has been placed on SpiritBank’s Do-Not-Call List.
- d. SpiritBank owes no affirmative obligations to Ryan Alan Swanberg under 47 C.F.R. §64.1200.

Further, SpiritBank prays that the Court award SpiritBank its court costs, attorneys’ fees and any additional relief which this Court deems just and proper.

Respectfully submitted,

LATHAM, STALL, WAGNER,
STEELE & LEHMAN, P.C.

A handwritten signature in black ink, appearing to read 'K. E. Wagner', is written over a horizontal line.

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